

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID PORTILLO,) Case No. CV 08-3523-JVS(RC)
)
 Petitioner) ORDER ADOPTING REPORT AND
) RECOMMENDATION OF
 vs.) UNITED STATES MAGISTRATE JUDGE
) AND ORDER DENYING
 JOHN MARSHALL,) CERTIFICATE OF APPEALABILITY
)
 Respondent.)
 _____)

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the
Petition and other papers along with the attached Report and
Recommendation of United States Magistrate Judge Rosalyn M. Chapman,
as well as petitioner's Objections, and has made a de novo
determination.

IT IS ORDERED that (1) the Report and Recommendation is approved
and adopted; (2) the Report and Recommendation is adopted as the
findings of fact and conclusions of law herein; and (3) Judgment shall
be entered denying the petition and dismissing the action with
prejudice.

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1 This Court finds an appeal would not be taken in good faith, and
2 that petitioner has not made a substantial showing that he has been
3 denied a constitutional right, for the reasons set forth in the Report
4 and Recommendation of the United States Magistrate Judge, and
5 accordingly, a certificate of appealability should not issue under
6 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b). Slack v. McDaniel,
7 529 U.S. 473, 483, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000);
8 Mayfield v. Calderon, 229 F.3d 895, 900 (9th Cir. 2000). Thus, IT IS
9 FURTHER ORDERED that a Certificate of Appealability be DENIED.

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11 FINALLY, IT IS FURTHER ORDERED that the Clerk shall serve copies
12 of this Order, the Magistrate Judge's Report and Recommendation and
13 Judgment by the United States mail on petitioner.

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15 DATED: June 29, 2010



17 JAMES V. SELNA
18 UNITED STATES DISTRICT JUDGE
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